

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DOUGLAS BRUNSON,)	
)	
Petitioner,)	Civil Action No. 17-264
)	
v.)	Judge Cathy Bissoon
)	Magistrate Judge Robert C. Mitchell
THERESA DELBASO, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Robert C. Mitchell for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On November 1, 2017, the Magistrate Judge issued a Report (Doc. 30) recommending that Douglas Brunson's 2254-habeas petition, as amended, be dismissed; and that a certificate of appealability be denied. Service of the Report and Recommendation was made, and Petitioner has filed Objections. *See* Docs. 35 & 38.

Petitioner's Objections are **OVERRULED**. As Judge Mitchell correctly observed, the prosecutor's purported breach of Petitioner's plea agreement had no impact on his resentencing. *See* Report at 6-7. Consequently, Petitioner cannot establish prejudice under *Strickland*, and this is fatal to his claims. Campbell v. Smith, 770 F.3d 540, 549–50 (7th Cir. 2014) (holding same); *compare also id.* at 550 (in determining whether a petitioner has shown prejudice, the court may consider evidence regarding the actual decision-making process, provided it is part of the sentencing record) *with* Report at 6-7 (quoting state court's colloquy at resentencing, indicating that Petitioner would have received the same sentence, regardless of the

prosecutor's recommendation). The Campbell decision is well-reasoned and persuasive, and the Court adopts it in support of the Magistrate Judge's Report and Recommendation.

The Court likewise rejects Petitioner's contention that trial-counsel was ineffective for advising Petitioner to plead guilty because "there [was] insufficient evidence to support a robbery conviction." *See* Doc. 28 at pg. 2 of 15. Even assuming this issue has not been procedurally-defaulted, *see* Report at 8, Petitioner's claim fails on the merits because he "specifically waived the need for the Commonwealth to set forth the factual bases for its [charges]." *See* Report at 7-8. In support of the Report and Recommendation, the Court incorporates by reference, and adopts, the analyses and record-citations in Respondents' Answer (Doc. 12), at pages 34 through 36.

Thus, after a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, it hereby is ORDERED that Douglas Brunson's 2254-habeas petitions, as amended, are **DISMISSED**;¹ a certificate of appealability is denied; and the Report and Recommendation is adopted as the Opinion of the District Court, as supplemented herein.

IT IS SO ORDERED.

February 13, 2018

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

¹ In light of this ruling, Petitioner's Motion (**Doc. 22**) to appoint counsel is **DENIED AS MOOT**.

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